

The Legal Politics of Restorative Justice in the Criminal Justice System: The Transition from Sectoral Regulation to Integration in the New Criminal Procedure Code

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Abstract

Introduction: This study examines the declining effectiveness of retributive punishment in reducing crime, highlighting the need for a more humane approach through restorative justice. The current criminal justice system still emphasizes punitive measures, while restorative mechanisms involving affected parties remain limited and fragmented across institutional frameworks.

Purposes of the Research: This research aims to (1) identify the regulation of restorative justice within each subsystem of the criminal justice system, and (2) analyze the legal policy direction for resolving criminal cases through restorative justice in the future criminal justice system.

Methods of the Research: This study employs a normative juridical method using statutory, conceptual, and case approaches. Legal materials are analyzed systematically to examine the consistency, adequacy, and future direction of restorative justice regulation within the Indonesian criminal justice system.

Results Main Findings of the Research: The findings reveal that prior to the new Criminal Procedure Code, restorative justice regulations were fragmented across institutional policies, leading to interpretive inconsistencies. Although recognized in the new Code, its implementation depends on further regulations. This study highlights the urgency of harmonizing legal frameworks to ensure consistent application and achieve substantive justice.

Keywords: Legal Policy; Restorative Justice; Criminal Justice System.

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INTRODUCTION

Today's global developments affect all aspects of people's lives, not only economically, socially and culturally, but also in the legal system in the world, including Indonesia. This massive change in the legal system requires Indonesia to adjust and adapt to various rules that develop in other countries, finding solutions to urgent legal problems that need to be resolved immediately.¹

¹ Putri Maha Dewi et al., "Kajian Tentang Perkembangan Globalisasi Dalam Formulasi Kebijakan Pembangunan Hukum Nasional Indonesia" 2 (2019), p 42-49.

Pancasila and the 1945 Constitution of the Republic of Indonesia must be the foundation of national legal development, global influence should not change the nation's ideals in advancing the general welfare of the nation as mandated by the constitution. Therefore, the development of national law must be integrated with other fields, including the values that live in society.² The legal system that has been built has a relationship with each other not only in legal material, but also in structure, culture and also in law enforcement.³

The sustainability of national legal development through the formation of laws and regulations must pay attention to the rights and obligations of citizens as a form of practicing Pancasila and the 1945 Constitution. With the hope that there is awareness among citizens of the importance of obeying and complying with the law and the state's obligations in law enforcement and ensuring legal certainty. Making legal life better and more useful.⁴

Law enforcement through the criminal justice system must pay attention to social developments in society, the function of the criminal justice system in tackling crime is very necessary for law enforcement.⁵ Problems often arise because the system has not worked according to the expectations of the community, often the development of society is not accompanied by the development of the law itself so that it forces the law to adjust to the development of society to achieve the justice and legality that is desired.⁶ Therefore, the direction of legal development must be able to provide services to the community as a result of global developments, by presenting positive laws that are in accordance with the needs of the community.

The classic problem with the work of the criminal justice system is that each sub-system institutionally has its own vision, mission and goals and also the authority to determine and make decisions on an event that occurs in each institution. If there is a change to one sub-system, it will indirectly affect the other sub-systems which will have an impact on the achievement of the goals of the criminal justice system as a whole, so a good pattern of

² Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, Bandung, 2000).

³ Ralph Adolph, *The Legal System: A Social Science Perspective*, 2016, p. 14-16.

⁴ Abdul Manan, *Aspek-Aspek Pengubah Hukum* (Jakarta: Kencana Prenada Media, 2009). (Jakarta: Kencana Prenada Media, 2009), p. 5.

⁵ S. D. Raharja and A. Saptomo, "Reconstruction Discourse Justice Criminal Law as an Ideal Model for Implementing Restorative Justice," *Jurnal Impresi Indonesia* 3, no. 12 (2024): 924-932, <https://doi.org/doi:10.58344/jii.v3i12.5732>.

⁶ Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan* (Yogyakarta: Graha Ilmu, 2010), p. 144.

cooperation and the same understanding are needed to achieve the goals of the criminal justice system.⁷ The Criminal Procedure Code which is the basis for the work of the criminal justice system in enforcing the law, be it at the level of the police, prosecutor's office, courts and correctional institutions. The understanding of the criminal justice system is essentially what these institutions do as a form of concrete effort to enforce abstract legal norms.⁸

Satjipto Raharjo stated that the settlement of cases that lead to trials through the existing system is a form of justice that has long been a form of justice in law enforcement, this is because there are several stages that are eagerly taken by those who deal with the law ranging from the Police, Prosecutor's Office, District Courts, High Courts, and even to the Supreme Court which is one of the causes of the accumulation of cases in the courts.⁹ In the future, a new breakthrough is needed in anticipating the accumulation of cases in judicial institutions.

The criminal justice system, which consists of sub-sub-systems, essentially has two main elements that affect each other, namely institutions as organs and functions. If the institution as an organ is a container or form, while if it is a function, it is the content/substance of its purpose, when viewed from the organs in the criminal justice system (Police/Investigators, Prosecutor's Office/Prosecutors and Correctional Institutions/criminal implementers) it is an executive instrument, while when viewed from its function, it is the implementer of criminal law enforcement and the court institution as a support for the judiciary. The organs and functions in the criminal justice system appear to be out of sync so that it has an impact on the work of the criminal justice system.¹⁰

Sharp criticism comes from practitioners and legal academics against the current working of the criminal justice system related to the role and function of the judicial institution, which is too burdened, slow and very expensive and does not pay attention to the public interest, is too formal and does not pay attention to the public interest, is too formal and too technical, especially the existence of a "legal mafia" that pretends to give the impression that judges'

⁷ Topo Santoso, *Kriminologi* (Jakarta: Raja Grafindo Persada, 2009), p. 6.

⁸ Bryan A. Garner, *Black's Law Dictionary*, Delapan (West Publishing CO, 2004), p. 901.

⁹ Satjipto Rahardjo, "Sisi-Sisi Lain dari Hukum di Indonesia," *Kompas*, 2003, p. 170.

¹⁰ Pujiyono, "Rekonstruksi Sistem Peradilan Pidana Indonesia Dalam Perspektif Kemandirian Kekuasaan Kehakiman," *Masalah-Masalah Hukum (MMH)* 41 (2012), p. 119.

decisions can be bought,¹¹ It is clear that the application of the formal legal system only prioritizes legal certainty causing a sense of injustice in society.¹²

The management of cases in the current criminal justice system actually raises new problems, the judicial model still causes a pile of cases, ignores the rights of victims, and is not in accordance with the principles of simple justice. The long process is complicated, and expensive that is still rigid so that it does not improve the impact of crime, does not reflect justice for the community in fact, the law is essentially designed to provide justice and benefits for the community as reflected in the values of Pancasila.¹³

The need for a new idea and breakthrough in resolving a criminal case, one of which is through restorative justice, where the concept of restorative justice has developed in various parts of the world in terms of prevention and handling of cases. The concept of restorative justice provides new hope for the effective and comprehensive handling of criminal cases.¹⁴ The emergence of the idea of restorative justice comes from the Maori tribes of the indigenous tribes in Selendia Baru in maintaining peace in the event of a conflict by presenting the perpetrators, victims and *stakeholders*.¹⁵

In line with these developments, *restorative justice* is expected to be an alternative in crime control and the reduction of the burden on correctional services. However, critically, the regulation is still spread through Police Regulations, Prosecutor's Regulations, and Supreme Court Rules which have the potential to cause differences in implementation, while the New Criminal Code has not been fully implemented in an integrated manner. This condition shows that there is a gap between norms and practices, making the study of the legal politics of criminal case settlement through *restorative justice* in the criminal justice system important to be researched.

¹¹ Bambang Sutyoso, *Penyelesaian Sengketa Bisnis, Solusi Dan Antisipasi Bagi Peminat Bisnis Dalam Menghadapi Sengketa Kini dan Mendatang* (Yogyakarta: Citra Media, 2006), p. 30.

¹² Ahmad Faizal Azhar, "Penerapan Konsep Keadilan Restoratif (Restorative Justice) Dalam Sistem Peradilan Pidana," *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 2 (2019), p. 138.

¹³ Lisa Aminatul Mukaromah et al., "Implementasi Restorative Justice dalam Pemulihan Ekonomi Nasional : Upaya Mewujudkan Peradilan yang Humanis (Studi terhadap Rumah Restorative Justice Bojonegoro)" 6, no. 2 (2023), p. 6350.

¹⁴ Gordon Bazemore dan Mara Schiff, "Juvenile Justice Reform and Restorative justice: Building Theory and Policy from Practice," *Willan Publishing, Oregon* 5 (2005), p. 5.

¹⁵ Dewi Yolandasari Lenap, "Bentuk Perlindungan Hukum Bagi Anak Sebagai Korban Kejahatan Berdasarkan Restorative justice," *Jurnal Ilmiah Universitas Mataram*, 2014, p. 36.

METHODS OF THE RESEARCH

The research used is normative juridical research. Normative legal research by studying sources or written materials by interpreting and comparing various sources related to “The Legal Politics of Restorative Justice in the Criminal Justice System: The Transition from Sectoral Regulation to Integration in the New Criminal Procedure Code”. This research is an approach that the researcher uses is a legal, case and concept approach.

RESULTS AND DISCUSSION

A. Restorative Justice Arrangements in Each Criminal Justice Subsystem

Restorative justice is used as one of the new approaches in resolving criminal cases that are no longer focused on criminalization but rather on restoring the situation by the dialogue/deliberation method by involving all parties affected by the criminal act that occurred, namely the perpetrator/family of the perpetrator, the victim/victim's family, community leaders, law enforcement officials and/or other parties interested in the criminal act that occurred. The implementation of restorative justice is currently carried out at every level of the criminal justice sub-system, both at the Police, Prosecutor's Office and Court levels, where the implementation is currently still regulated in each law enforcement institution, this can be seen at the Police level regulated through Police Regulation Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, at the Prosecutor's Office through Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice, and at the Court Level it is regulated through Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice in the General Judicial Environment.

The approach to resolving criminal cases through restorative justice, the regulation of which exists in each criminal justice sub-system can be seen as follows:

1. Police

Realizing and answering the development of society requires a new concept for criminal law enforcement, namely by accommodating the norms and values that apply in society, one of which is through restorative justice which is regulated through Police Regulation Number 8 of

2021 concerning the Handling of Crimes Based on Restorative Justice. As an alternative and solution, it also provides legal certainty, especially the benefits and sense of justice of the community. The resolution of criminal cases at the police level must prioritize and emphasize restorative justice by restoring the original state of affairs to the interests of victims and perpetrators of criminal acts by no longer focusing on criminalization.

The implementation of restorative justice by police institutions is carried out through two police functions in the field, namely *reserse* (investigators) and Community Services, carried out in a humanist way that prioritizes the recovery of the situation, be it the victim, perpetrators, victims' families/perpetrators, and even the affected community or community leaders, by prioritizing progressive law in every criminal case settlement. The focus of *restorative justice* is at least three. First, repairing losses caused by crime by involving victims. Second, looking at the accountability of perpetrators. Finally, preventing similar losses from occurring in the future,¹⁶ In order to be able to resolve a criminal case through a restorative justice approach in the police, there are general conditions that must be met, namely material requirements and formal requirements and the existence of special requirements, material requirements include: 1) Do not cause unrest and/or rejection from the community; 2) Do not have an impact on social conflicts; 3) Do not have the potential to divide the nation; 4) Do not have the nature of radicalism and separatism; 5) Not perpetrators of repeating criminal acts based on court decisions, and 6) Not criminal acts of terrorism, crimes against state security, criminal acts of corruption and crimes against people's lives.

Furthermore, in relation to the formal requirements, namely the existence of peace from both parties, this peace must be evidenced by the existence of a peace agreement signed by the parties, and also the fulfillment of the rights of the victim and the responsibility of the perpetrator, except for drug crimes. As for the fulfillment of this right, it can be in the form of the return of goods, compensation for losses, reimbursement of costs incurred due to the violation, and compensation for losses due to the violation. If the material and formal

¹⁶ Dwinanda Linchia Levi Heningdyah Nikolas Kusumawardhani and Sumartini Dewi, "Dasar Konseptual dan Implementasi Restorative Justice oleh Polri untuk Mewujudkan Tujuan dan Fungsi Hukum (Kepastian, Keadilan dan Kemanfaatan)," *UNES Law Review* 6, no. 2 (2023): 4197–4203.

requirements have been met, then the investigation or investigation can be stopped. The special requirements as stipulated in the Police Regulations are additional requirements for information crimes and electronic transactions, drugs and traffic. The termination of an investigation or investigation is carried out through the mechanism of special case title, and the reason for the closure of an investigation or investigation is for the sake of the law.¹⁷ The existence of this Police Regulation is a legal basis for the Police to take actions and policies to resolve criminal cases more humanely and balanced towards the fulfillment of the rights of victims and perpetrators, thus it is expected to provide benefits, justice, and legal certainty for the community, especially for those who are in litigation.

2. Prosecutor's Office

As a law enforcement agency, the Prosecutor's Office has a very strategic role in filtering a case from the investigation level to the examination in court, as a case controller the Prosecutor must be able to answer the legal needs of the community who want justice in law enforcement which does not only rely on normative rules and the achievement of legal certainty alone, for this reason the Prosecutor's Office is expected to make legal breakthroughs in answering the development and legal needs of the community itself, one of which is through the restorative justice approach.

The prosecutor's authority is not only on the prosecution and determining whether or not a criminal case can be prosecuted and what article is appropriately applied, but the prosecutor's office can also stop a case based on the principle of opportunity or the principle of discretion to prosecute, besides that the termination of prosecution can be carried out if the case is not enough evidence, there is no criminal act, or if the case is stopped for the sake of the law (Article 140 Paragraph (14) of the Criminal Code). This is also the basis for the prosecutor's office in stopping the prosecution of perpetrators of criminal acts through restorative justice as stipulated in Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The realization of restorative justice through the Prosecutor's Regulations must also pay attention to several principles, namely the principles of

¹⁷ Ibid.,

justice, public interest, proportionality, criminality as a last resort, and fast, simple, and low cost. Furthermore, in an effort to reconcile perpetrators and victims, the priority is restorative justice that is carried out without pressure, coercion, or intimidation. Its implementation is carried out at the prosecutor's office, with a notification period of no more than 14 days after the transfer of responsibility to the suspect and evidence, while the mechanisms commonly used in the concept of restorative justice include dialogue and mediation. These two mechanisms aim to reach an agreement without going through a collaborative process and improve the situation and pattern of relationships between perpetrators and victims.

The big challenge faced by the prosecutor's office in realizing the principles of restorative justice is the paradigm shift to prosecution that has been carried out where the position of the prosecutor who views a case as a problem of the defendant and the state, but on the contrary, the restorative justice approach allows the prosecutor to view the case as a problem where the state harms the victim.¹⁸ The termination of prosecution based on Restorative Justice is carried out by paying attention to: a) the interests of the victim and other protected legal interests; b) the avoidance of negative stigma; c) the avoidance of retaliation; d) the response and harmony of the community; and e) propriety, decency, and public order. (Article 4 Paragraph (1) of the Prosecutor's Regulation). In addition to these requirements, there are several factors that must also be considered by the prosecutor, namely: the subject, target, category and threat of the crime, the background of the occurrence and competition of the crime, and so on. Second, the level of error, loss, and consequences arising from the crime; Next, consider the costs and benefits of case settlement, restitution, and restoration of peace between the victim and the suspect. (Article 4 Paragraph (2) of the Criminal Code).

Furthermore, criminal cases can be closed for the sake of the law and the prosecution is stopped through restorative justice must meet several conditions, namely: 1) The suspect has committed a criminal act for the first time; 2) The criminal act is threatened with a fine or threatened with imprisonment of not more than 5 years; 3) The criminal act is committed with the value of evidence or losses incurred as a result of the criminal act of not more than IDR. 2.5

¹⁸ *Ibid.*,

million. (Article 5 Paragraph (1) of the Prosecutor's Regulation). The authority of the public prosecutor to close a case in the interest of the law, more specifically if the case has been resolved out of court, also includes the termination of prosecution through restorative justice. This policy is very important because of the strategic position and role of the prosecutor in the integrated criminal justice system. The prosecutor functions as a case controller or *dominus litis*, which is responsible for screening criminal cases and determining whether they need to be forwarded to trial with legal objectives in mind.

It is important to know that "law enforcement" and "law enforcement" are terms that refer to the process of making efforts to ensure that law enforcement standards truly function as a code of behavior in relation to the law and the life of society and the state. When viewed from the subject, law enforcement can be carried out by a wider range of subjects. In addition, law enforcement can also be interpreted as an effort to carry out law enforcement for the sake of social benefits.¹⁹ Therefore, in order to achieve justice through the settlement of cases and restore the balance as before through restorative justice, what must be the attention of the prosecutor is related to the profile of perpetrators and victims and the type of criminal cases to be restored, the spirit is no longer imprisonment but the restoration of the situation before the occurrence of a criminal act where the process also involves many people and community leaders, not only perpetrators and victims.

3. Courts

The penal system has developed so that it is no longer focused on criminalizing defendants, but has shifted by using a restorative justice approach as an effort to harmonize the interests of victim recovery and the responsibility of the defendant. As a legal umbrella in realizing this at the court level, the Supreme Court has issued Supreme Court Regulation Number 1 of 2024 concerning Guidelines for Criminal Cases Courts Based on Restorative Justice. This is a breakthrough for the court in answering the development of community law in realizing justice. Restorative Justice itself is an alternative to the resolution of criminal cases which in its mechanism does not focus on criminalization but is transformed into a dialogue process

¹⁹ *Ibid.*,

(involving perpetrators, victims, families, perpetrators/victims, and other related parties) collectively creating an agreement in the settlement of criminal cases that are fair and balanced for both the victim and the perpetrator, by prioritizing restoration to the original state, and restoring the pattern of good relations in society. The dialogue process is the main thing in realizing restorative justice where many parties are involved, not only the perpetrator and victim but also other parties involved in a criminal act to achieve balance and justice as well as the restoration of the relationship between the perpetrator and the victim.

The guidelines for prosecuting criminal cases based on Restorative Justice regulated in the Perma can be carried out if the following provisions are met: a) the criminal act committed is a minor criminal act or the victim's loss is not more than IDR.2,500,000.00 (two million five hundred thousand rupiah) or not more than the minimum wage of the local province; b) the criminal act is a complaint offense; c) a criminal act with a maximum penalty of 5 (five) years in prison in one of the indictments, including the crime of *jinayat* according to qanun; d) a criminal act with a child perpetrator whose diversion is unsuccessful; or e) a traffic crime in the form of a crime. (Article 6 Paragraph (1) of the Supreme Court Regulation). In addition to these terms and conditions, the Judge is not authorized to adjudicate a criminal case based on Restorative Justice if: a) The victim or the Defendant refuses to make peace; b) there is a Power of Attorney; or c) The Defendant repeats a similar criminal act within a period of 3 (three) years from the completion of the Court's decision with permanent legal force. (Article 6 Paragraph (2) of the Supreme Court Regulation).

Supreme Court Regulations apply to criminal cases as well as *jinayat* and military cases. Restorative Justice aims to restore the relationship between the defendant, the victim, and the community. According to the Supreme Court Regulation, the concept of restorative justice does not eliminate a person's criminal liability. Judges still consider who is responsible for a criminal offense when they decide a case, but the *ultimum remedium* in criminal law should be used as a last resort to resolve a criminal case.

The Supreme Court Rules also state that if the defendant justifies all charges, does not file a memorandum of objection, and justifies the public prosecutor's indictment, the judge can

directly shift the examination to the restorative justice mechanism, as indicated by the Supreme Court Rules. In addition, if peace has been reached before the trial begins, the judge can examine the agreement that has been made between the defendant and the victim. This examination shows that the current practice of restorative justice does not focus on the outcome or elimination of criminal liability. Instead, it concentrates on the process of victim recovery and the defendant's accountability, the judge must also ensure that the peace is achieved without any misrepresentation, coercion, or fraud from either party. Against the delicacy of a complaint, a peace agreement signed in front of the judge is considered to have occurred legally when the withdrawal of the complaint is made. As a result, the judge may determine the prosecution to be null and void or inadmissible. A peace agreement between the victim and the defendant, or the defendant's willingness to take responsibility for the losses suffered by the victim, may be a consideration for mitigating the sentence or a consideration for making the sentence conditional or supervised.

After the promulgation of Law Number 20 of 2025 concerning the Criminal Procedure Code (New Criminal Procedure Code), the regulation of *restorative justice* reflects a significant shift in criminal law politics from a retributive approach to a more restorative and integrated paradigm in the criminal justice system. This approach is no longer an alternative, but rather part of a formal mechanism that accommodates the interests of victims, perpetrators, and the community. However, the regulation is still general, thus opening up the potential for differences in interpretation in practice. Without clarity on case boundaries, procedural standards, and adequate supervision mechanisms, its application risks being inconsistent and deviating from the expected goals.

However, although the New Criminal Procedure Code has regulated its mechanism comprehensively from the investigation stage to the trial (Articles 79–86 of the New Criminal Procedure Code), the regulation is still general and its effectiveness still depends on the Government Regulation as the implementing rule. This delegation provides room for flexibility, but at the same time has the potential to create technical gaps and encourage adjustments to existing sectoral regulations. Therefore, the success of *restorative justice* is not

only determined by the existence of norms in the Criminal Procedure Code, but also by regulatory harmonization, institutional readiness, and consistency of implementation in order to be able to realize substantive justice and legal certainty.

Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024 normatively remain valid as long as they do not conflict with the New Criminal Procedure Code, but their position has now shifted to a technical rule that must adjust to a more integrated criminal procedure law framework. Previously, *restorative justice arrangements* were sectoral and partial so that they had not formed a complete system, so the presence of the New Criminal Procedure Code was a momentum to unify these arrangements. However, the potential for disharmony still exists if it is not followed by comprehensive harmonization of regulations. In the future, the establishment of Government Regulations on *restorative justice mechanisms* will further determine the direction of regulation, and even potentially replace existing sectoral regulations, so that mature institutional readiness is needed so that the transition to an integrated system can run effectively, consistently, and be able to realize legal certainty and substantive justice.

B. The Legal Politics of Criminal Case Resolution Through Restorative Justice in the Criminal Justice System in the Future

Criminal justice in Indonesia is entering a new phase in its history. One form of criminal law reform in Indonesia is the orientation to improve or restore the situation after a criminal case, namely the existence of a criminal justice process through the application of justice known as restorative justice which is different from retributive justice (emphasizing justice in retribution) and restitutive justice (emphasizing justice in compensation). Retributive justice crimes, are defined as actions committed by a person against another person. Furthermore, retributive justice believes that the responsibility of the perpetrator of a crime is formulated in the context of criminality, while restorative justice believes that the responsibility of the perpetrator is an action that helps him make better decisions. Retributive justice in its application, usually applies deterrence and prevention, while restorative usually applies restorative.²⁰

The criminal justice system has developed without relying on the perpetrator. Instead, the

²⁰ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale: Scottsdale, 1990), p. 181-185

interest has shifted to the recovery of the victim and the responsibility of the perpetrator. The concept of restorative justice is different from the concept of retributive justice that was previously used in the criminal justice system. The development of criminal justice science and the nature of modern criminality have introduced a "perpetrator-victim" relationship approach as a substitute for the approach of deeds or perpetrators "*daad-dader strafrecht*" legal activists have created a formulation of justice as an effort to defend human rights. There are three dimensions in modernization and legal reform, namely: content, structure, and legal culture. These processes can be carried out continuously, simultaneously, and alternately.²¹

The restorative justice approach helps victims of crime by providing the greatest opportunity and possibility to get compensation, providing a sense of security, and encouraging the perpetrator to take responsibility for what has been done, allowing the community to understand how a crime occurred so that they can help advance the common good in preventing crime, by prioritizing mutual agreement. Peace between perpetrator and victim in conventional criminal procedure law cannot stop law enforcement from bringing cases to the criminal realm that leads to criminalization.²² Formal criminal proceedings take a long time and do not establish or restore the relationship between the perpetrator and the victim. The victim cannot influence the criminal verdict and can only testify in court, this is because the prosecution has been completely left to the public prosecutor who has received the investigation file to be processed on criminal suspicions, without knowing or understanding the true circumstances of the case. The concept of restorative justice states that the relationship between the perpetrator and the victim must be restored as soon as the matter is resolved.²³

Maintaining order and tranquility is one of the goals of criminal law. The goal of criminalization is achieved so that criminal proceedings are no longer needed. The handling of criminal cases must reflect the community's sense of justice with a fairer and more humane method must be prioritized over formal legalistic methods that do not create a sense of justice

²¹ Riska Vidya Satriani, "Keadilan Restoratif Sebagai Tujuan Pelaksanaan Diversi Pada Sistem Peradilan Pidana Anak," *Mahkamah Agung Republik Indonesia*, 2017.

²² Eka Fitri Andriyanti, "Urgentitas Implementasi Restorative Justice Dalam Hukum Pidana Indonesia," *Jurnal Education and Development* 8, no. 4 (2020): 326-31.

²³ Syahrir Kuba, "Optimalisasi Perlindungan Saksi Dan Korban Dalam Rangka Memantapkan Penegakan Hukum Di Indonesia" 22, no. 1 (2022): 89-100.

in society.²⁴ The criminal justice system is focused on crime and criminals, and each part of the system tends to think in a formal or positivist way, ignoring the interests and sense of justice that are the basis of law enforcement. Criminal justice procedures reflect more fairness between the interests of the state and the interests of criminals, because all parts of the criminal justice system are unwilling to take risks for the sake of justice, handling such cases violates the sense of justice of the community. Each part of the criminal justice system does not have the same goals, but prioritizes the achievement of certain functional goals, which causes the system to not function properly.²⁵

Restorative justice in criminal law, which is becoming an increasingly interesting topic to discuss, is an alternative approach to resolving criminal cases because restorative justice concentrates on victim recovery, rehabilitation of perpetrators, and conflict resolution in society. Although more and more countries are adopting the principle of restorative justice, the problem and opportunity to apply it continue to be a major concern. As stated by Muladi, the main goal of restorative justice is the achievement of justice that is as fair as possible for all parties involved in it, not just punishing.²⁶

The principle of restorative justice has received international recognition and is applied in various policies and regulations, its implementation still faces significant challenges. One of the main challenges is the uneven understanding among legal practitioners, the criminal justice system, and society at large about the concepts and principles of restorative justice. This lack of understanding can lead to barriers to change and limited use of restorative justice approaches,²⁷ It is important in such a situation, to thoroughly study how restorative justice is applied in the criminal justice system, to make the application of restorative justice principles more efficient and optimal, it is necessary to strengthen the understanding of the concepts and principles of restorative justice, by developing restorative justice by looking at the difficulties and obstacles faced and seeing the opportunities that exist. Education provided to legal

²⁴ *Ibid.*,

²⁵ M. Chaerul Risal, "Analisis Kritis Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana: Tantangan dan Peluang," *Jurnal Al Tasyri'iyah* 3, no. 1 (2023): 55-70.

²⁶ Irvan Maulana dan Mario Agusta, "Datin law jurnal," *Konsep dan Implementasi Restorative justice di Indonesia* 2 Nomor. 2, no. 18 (2021): 46-70.

²⁷ *Ibid.*,

professionals, law enforcement, and the public can help dispel misunderstandings and encourage support for this method.

A better understanding of restorative values brings benefits to stakeholders and the people and the parties involved will be more open to the implementation of restorative justice, by combining cooperation between stakeholders, modern technology, and education about the concept of restorative justice. As stated by Mochtar Kusumaatmadja and Arief Sidarta, the purpose of law cannot be separated from the ultimate goal of community life which cannot be separated from the values and philosophy of life that are the basis of community life, which ultimately leads to justice. Regarding the purpose of law, Achmad Ali stated that the issue of legal purpose can be studied through 3 (three) points of view, namely: 1) From the point of view of positive-normative legal science, the purpose of law is emphasized in terms of legal certainty; 2) From the point of view of legal philosophy, the purpose of law is emphasized in terms of justice; 3) From the point of view of legal sociology, the purpose of law is emphasized in terms of utility.²⁸ In order to realize justice, it is not enough to focus on the violation of the law, who the perpetrator is, and the punishment imposed. True justice can only be achieved if the law considers who is harmed, what is needed to recover the victim, and who is responsible for fulfilling the rights of the victim. Each law enforcement institution is responsible for the implementation of restorative justice. Although restorative justice has been regulated in various regulations, improvements are needed. It is feared that restorative justice arrangements in various rules create differences in perceptions and may hinder its implementation by law enforcement officials.

The restorative justice method, also known as restorative justice, responds to the development of the criminal justice system by emphasizing how important it is for communities and victims who are considered marginalized to be involved with the mechanisms that exist in the current criminal justice system.²⁹ The community system for dealing with crime is the criminal justice system. Controlling crime so that it remains below the

²⁸ Fajar Ari Sudewo, *Pendekatan Restorative Justice bagi Anak Yang Berhadapan Dengan Hukum, Sustainability (Switzerland)*, vol. 11 (Jawa Tengah: Nasya Expanding Management, 2019).

²⁹ *Ibid.*,

limits of community tolerance does not mean tolerating a crime or allowing it to happen. On the contrary, tackling means controlling crime so that it remains below the limits of community tolerance. Basically, law enforcement efforts include tackling criminal acts. Therefore, criminal policy or criminal politics are also included in law enforcement. Community life faces problems, namely crime or criminality.³⁰ The perception of the Indonesian public regarding the handling and punishment procedures for criminal offenders or law violators often reflects the arbitrariness of law enforcement officials (police, prosecutors, judges) as a legal structure.³¹ Kondisi tersebut berdampak pula pada pergeseran nilai-nilai keadilan yang kini hanya terkesan bertumpu pada pemenuhan keadilan prosedural semata dan sering kali mengabaikan keadilan substansial.³² In this process, the law is not independent, meaning that there are other factors that are closely related to the law enforcement process that must participate, namely the community itself and its law enforcement.

The legal politics of criminal case settlement through *restorative justice* shows a gradual shift from an initially sectoral arrangement to a more integrated framework in the criminal justice system. Prior to the New Criminal Procedure Code, this approach had been accommodated through Police Regulation Number 8 of 2021, Prosecutor's Regulation Number 15 of 2020, and Supreme Court Regulation Number 1 of 2024 which are still in force as long as they do not contradict, but are basically partial and have not formed a complete system. The accommodation of *restorative justice* in the New Criminal Procedure Code affirms the political direction of state law to make it a formal part of criminal procedure law, while at the same time reflecting legal reform that is more progressive and responsive to the needs of substantive justice. However, this policy is still in the transition stage because there is not optimal harmonization between the New Criminal Procedure Code and sectoral regulations, which has the potential to maintain differences in mechanisms and standards between law enforcement agencies. This condition shows that the success of *restorative justice* does not only depend on

³⁰ *Ibid.*,

³¹ Antonius De Andrade Fahik, Anak Agung Sagung Laksmi Dewi, dan I Made Minggu Widyantara, "Implementasi Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 (Studi Kasus Di Kejaksaan Negeri Jembrana)," *Jurnal Konstruksi Hukum* 3, no. 2 (2022): 240–45, <https://doi.org/10.55637/jkh.3.2.4805.240-245>.

³² Bambang Sutyoso, "Mencari Format Ideal Keadilan Putusan Dalam Peradilan," *Jurnal Hukum Ius Quia Iustum* 17, no. 2 (2010): 217–32, <https://doi.org/10.20885/iustum.vol17.iss2.art5>.

normative recognition, but also on regulatory synchronization, strengthening coordination, and effective supervision. Without these efforts, *restorative justice* risks remaining partially or even stopping as a formal norm, so that the goals of integration, legal certainty, and substantive justice have not been fully achieved.

The legal politics of criminal justice settlement through *restorative justice* has basically moved in a more progressive direction by placing it as an integral part of the criminal justice system through the New Criminal Procedure Code. However, the policy direction has not been fully followed by structural readiness and regulatory alignment at the implementation level. The dependence on sectoral regulations that have not been harmonized and the coordination between institutions has not been optimal shows that *restorative justice* is still in the consolidation stage, not an established system. Therefore, the challenge ahead lies in the state's ability to unify the regulatory framework, clarify cross-institutional mechanisms, and ensure consistency of implementation in the field. Without these steps, *restorative justice* has the potential to lose its substance and only become a symbol of legal reform, not a real instrument in realizing justice oriented towards restoration and legal certainty.

CONCLUSION

The New Criminal Procedure Code has comprehensively regulated the *restorative justice* mechanism from the investigation stage to the trial, but its effectiveness still depends on the Government Regulation as the implementing rule. This delegation provides flexibility, but has the potential to create a technical vacuum if it is not regulated immediately. In addition, its enactment can encourage adjustments and even replace previous sectoral regulations. Therefore, its success is highly determined by regulatory harmonization, institutional readiness, and consistency of implementation to ensure substantive justice and legal certainty.

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